

Fiscal Estimate - 2019 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 19-1198/1	Introduction Number SB-009
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Description
 penalties for offenses related to operating a vehicle while intoxicated and providing a penalty

Fiscal Effect

State:

No State Fiscal Effect
 Indeterminate

<input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Create New Appropriations	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local:

No Local Government Costs
 Indeterminate

1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 2. <input checked="" type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Government Units Affected <input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Village <input checked="" type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Sources Affected	Affected Ch. 20 Appropriations
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	

Agency/Prepared By	Authorized Signature	Date
CTS/ Nancy Rottier (608) 267-9733	Nancy Rottier (608) 267-9733	5/2/2019

Fiscal Estimate Narratives

CTS 5/2/2019

LRB Number	19-1198/1	Introduction Number	SB-009	Estimate Type	Original
Description penalties for offenses related to operating a vehicle while intoxicated and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

This bill criminalizes a first offense operating a vehicle while intoxicated (OWI), changing the current civil forfeiture penalty to a Class C misdemeanor. The penalty for a Class C misdemeanor is a fine not to exceed \$500 and up to 30 days in jail or both. The bill requires the person to be sentenced to at least one day in jail.

The bill also eliminates the current law 10-year "look-back" provision that provides for increased penalties for a second OWI-related offense only if the person committed the second offense within ten years of the first offense.

The bill also allows a court to vacate the person's criminal conviction for a first OWI-related offense, and amend the record to a civil violation if, in the five years since the person was convicted of the offense, he or she has not committed any other OWI-related offense. If the person's petition is granted, the clerk of courts would amend the court records that are available in person and online to show only the civil violation.

The proposal to change first offense OWI to a misdemeanor will have a significant impact on the workload of the circuit courts. As a general rule, the more significant the penalty involved in a case, the greater the judicial resources that are required to process a case. A misdemeanor case, for instance, takes significantly greater judicial time and resources than a forfeiture case. A felony takes significantly greater judicial time and resources than a misdemeanor.

In preparing this analysis, we have relied on the Wisconsin Judicial Workload Assessment, submitted to the Director of State Courts by the National Center for State Courts in August 2016. In that study, all Wisconsin circuit court judges and court commissioners tracked all of their working time by case type category and case-related or non-case-related events for a four-week period. Among the case type categories were contested traffic and ordinance cases, uncontested cases, OWI 2nd through 4th cases, misdemeanors and felonies.

(Please note that in 2015 when the time study was conducted, some 4th offense OWI cases resulted in misdemeanor charges and some resulted in felony charges. All 4th offense OWI cases were raised to felonies by 2015 Wisconsin Act 371 that took effect on January 1, 2017. For purposes of the time study, judges and court commissioners were advised that if a 4th offense OWI rose to the level of a felony, it was to be counted as a felony case type rather than an OWI 2nd through 4th case type. Within the felony case type, OWI cases were not differentiated from other felony cases.)

According to the study, contested traffic or ordinance cases took 8 minutes of judicial time. OWI 2nd through 4th cases took 84 minutes of judicial time, and felony cases took 197 minutes of judicial time. The study also determined the amount of time available per year for judges and commissioners to hear cases. This "judge-year value" was 75,096 minutes of case-related time per judge per year.

For purposes of estimating the number of cases impacted by this bill, we have used Department of Transportation (DOT) data that records the number of OWI-related convictions by repeat offender status. The DOT data includes convictions from both circuit courts and municipal courts. This is the most complete data available for municipal court actions. The DOT data slightly underreports the total number of cases handled by the courts because it does not include cases that did not result in conviction. For purposes of this estimate, however, the DOT provides useful and reliable data. The DOT data for calendar year 2017, the most recent year available, shows 14,313 first offense OWI convictions.

Most first offense OWI cases are currently handled by the municipal courts. Not all areas of the state are served by municipal courts, however, so some first offense OWI cases are already being handled by the circuit courts.

For the calendar year 2017, there were 5,237 first offense OWI cases disposed of by the circuit courts, which is 36.6% of the total number of convictions. Changing first offense OWI to a criminal penalty will require all OWI violations to be handled by the circuit courts. For purposes of this estimate, we have assumed approximately 9,000 cases would be handled by the circuit courts rather than the municipal courts.

Fiscal Effect on Circuit Courts of First Offense OWI as Misdemeanor

To calculate the additional judicial workload (number of judges) required by these cases, we have used the number of first offense OWI convictions (14,313) times the length of each case (84 minutes), then divided it by the number of minutes in a judge-year (75,096). We have then subtracted from that total the first offense OWI cases currently being handled by the circuit courts; that calculation is the number of first offense OWI cases disposed of (5,237) times the length of each case (8 minutes), then divided it by the number of minutes in a judge-year (75,096). The results of these calculations are as follows:

$14,313 \times 84 \div 75,096 = 16.0$ judges
 $5,237 \times 8 \div 75,096 = .6$ judges
Number of judges needed: 15.4 judges

The table on Attachment A itemizes the annual costs involved in the creation of a new judgeship. The final figures for the fiscal effect include both one-time costs and ongoing costs. Both GPR and PR dollars are involved. Based on the cost of each new judgeship as detailed in Attachment A, the total costs for 15 additional judgeships, using these 2019 figures, are:

Total Costs One-Time	Ongoing
GPR \$4,624,650	\$37,830
PR 507,090	407,040
\$5,131,740	\$444,870
	\$4,716,870

Impact on the Counties

An aspect of any OWI proposal that is harder to quantify but that is significant is the impact on the counties. The circuit courts are funded by a combination of state and county revenues. This proposal would have a significant fiscal impact for counties. Additional circuit court proceedings, as would be required under this proposal, would require additional court staff and juror time, costs that are borne by the counties. These costs would vary by county but are estimated to be significant for every county.

Another impact of this proposal is to increase the workload faced by the county Clerks of Circuit Court. Their responsibilities include processing the cases, managing jurors, and collecting from those who are ordered to pay. Clerks of court already see many OWI offenders who struggle to pay the existing penalties, and they use a wide variety of collection techniques –payment plans, tax intercept, license suspensions and collection agencies – in order to collect fines, costs and surcharges. Adding about 9,000 additional cases per year would add significantly to costs borne by the counties.

In addition, counties are very likely to incur increased costs for their county jails, as first offense violators would now be subject to possible jail time. Jail costs are also paid by the counties. An accurate estimate of the increased costs is very difficult with existing data, but this is likely to be a significant cost for the counties, many of whom are already struggling with full or overcrowded jails.

Impact on Municipal Courts

This bill would have a significant impact on municipal courts, resulting from the shift of about 9,000 cases per year to the circuit courts. An accurate estimate of the fiscal impact and prediction of the changes that might result are impossible with the data available.

Fiscal Impact on Revenues

Revenues currently collected from first offense OWI violators would also be impacted. The current forfeiture that may be imposed for a first offense is \$150 - \$300. The fine associated with a Class C misdemeanor is \$0 - \$500. Several surcharges are added to the forfeiture or fine. Surcharges imposed by municipal courts in first offense OWI cases differ somewhat from surcharges imposed by circuit courts. Surcharges for criminal cases also differ from surcharges imposed in civil cases. The table labeled Current Surcharges on Attachment A summarizes the differences.

Because of the differences in surcharges imposed, the total charged to a person convicted of first offense OWI is not the same in municipal court as in circuit court. And the total charged would be significantly increased under the terms of this bill. Using a \$200 forfeiture or \$200 fine as an example, the totals imposed would be:

Municipal Court (Civil) \$848.00

Circuit Court (Civil) \$924.50

Circuit Court (Criminal) \$1,240.00

This bill would increase revenue from some surcharges and decrease it for others. The table labeled Revenue Increase (Decrease) per Case Under This Bill on Attachment A compares the amounts of the increases or decreases for each case by the entity to which that surcharge revenue is distributed, under current law and under this bill.

Summary of Impact of This Bill

Criminalizing first offense OWI would significantly increase the judicial workload of the circuit courts and would have a corresponding significant fiscal impact. It would require an additional 15 judgeships in order to provide the resources necessary to handle the additional circuit court cases. The annual cost to the state for 15 additional judgeships is estimated to be \$5,131,740, comprised of \$4,624,650 GPR and \$507,090 PR.

This proposal would also have a significant fiscal impact for counties and for municipal courts, but it is difficult to provide a more detailed estimate. Finally, surcharge revenues would be impacted, with some entities receiving more revenue and some entities receiving less revenue.

Long-Range Fiscal Implications

Attachment A

**Fiscal Effect on Circuit Courts of Making 1st Offense OWI a Misdemeanor
(as of January 2019)**

Annual Costs for Creating an Additional Judgeship

Circuit Courts (s. 20.625 (1)(a))

Judge Salary	\$141,773
Court Reporter Salary	63,800
Fringe Benefits	98,100
Travel	<u>3,660</u>
	\$307,333

Wisconsin State Law Library (s. 20.680 (4)(a))

WI Reports (one-time)	\$2,522
Advance Sheets	127
Bound Volumes	<u>328</u>
	\$2,977

Consolidated Court Automation System (CCAP) (s. 20.680 (2)(j))

Equipment (one-time)	\$27,136
Maintenance	<u>6,670</u>
	\$33,806

Total annual costs for creating a new judgeship:

	<u>Total Costs</u>	<u>One-Time</u>	<u>Ongoing</u>
GPR	\$308,310	\$2,522	\$307,788
PR	<u>33,806</u>	<u>27,136</u>	<u>\$6,670</u>
	\$342,116	\$29,658	\$314,458

Current Surcharges in OWI Cases			
Surcharge (per case)	Municipal Court (Civil)	Circuit Court (Civil)	Circuit Court (Criminal) (These are only applicable now in 2 nd offense and up.)
Penalty	26% of forfeiture	26% of forfeiture	26% of fine
Jail	\$10	\$10	\$10
Crime Lab	\$13	\$13	\$13
Justice Information System	\$0	\$21.50	\$0
Driver Improvement	\$435	\$435	\$435
Safe Ride	\$50	\$50	\$50
Ignition Interlock	\$50	\$50	\$50
Court Support Services	\$0	\$68	\$0
Victim-Witness	\$0	\$0	\$67
DNA Analysis	\$0	\$0	\$200
Court Costs	\$38	\$25	\$163

Revenue Increase (Decrease) per Case Under This Bill		
Surcharge	Municipal Court	Circuit Court
Justice Information System CCAP Various justice program	N/A	(\$6.00) (\$15.50)
Court Support Services General fund	N/A	(\$68.00)
Victim-Witness DOJ for V-W services	N/A	\$67.00
DNA Analysis DOJ for DNA analysis	N/A	\$200.00
Court Costs Municipality County (10.00-7.50) General fund (153-12.50) CCAP	(\$38.00)	\$2.50 \$140.50 (\$5.00)